

9.1 FORM NATURE OF CASE INSTRUCTION (CRIMINAL)

INSTRUCTION NO. 1

Members of the jury:

Now that you have been sworn, we are about to begin the trial of this case.

Before the trial begins, however, there are certain instructions you should have in order to better understand what will be presented to you and how you should conduct yourself during the trial.

This is a criminal trial to determine whether the defendant is guilty of the federal crime(s) with which he/she/it is charged. The party who brings this charges is called the plaintiff. In this federal action, the plaintiff is the United States of America, usually referred to as the government. The party charged with the crime(s) and against whom this action is brought is called the defendant. In this action the defendant is

_____.

The indictment charges that on or about the dates as alleged in each individual count of the indictment, in the State and District of Colorado, the defendant, _____, (describe crime(s) alleged).

The defendant, _____, has entered a plea of not guilty to the indictment.

The government, therefore, assumes the responsibility of proving beyond a reasonable doubt each of the essential elements of the crime(s) charged.

9.2. FORM ELEMENTS OF CRIME INSTRUCTION (CRIMINAL)

INSTRUCTION NO. 2

In order to sustain its burden of proof for the crime of _____ as charged in the indictment, the government must prove each of the following [number] essential elements beyond a reasonable doubt:

- 1.
2. (etc.)

If the government fails to prove any of those [number] elements beyond a reasonable doubt, then your verdict must be not guilty.

9.3. FORM STIPULATED FACTS INSTRUCTION (CRIMINAL)

INSTRUCTION NO. 3

The parties have stipulated to certain facts, for purposes of this trial. When the attorneys on both sides stipulate or agree as to the existence of a fact, you may accept the stipulation as evidence and regard the fact as proved. You are not required to do so, however, since you are the sole judge of the facts.

The stipulated facts are:

- 1.
2. (etc.)

9.4. FORM JURY DUTIES, ETC. INSTRUCTION (CRIMINAL)

INSTRUCTION NO. 4

Now I will give you some preliminary instructions to guide you in your participation in the trial.

Duty of Jury

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as I, the court, will give it to you. You must follow that law whether you agree with it or not.

Nothing I may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

Evidence

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that I may instruct you to find.

Certain things are not evidence and must not be considered by you. I will list them for you now:

1. Statements, arguments, and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that I have excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but have in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

Rules for Criminal Cases

There are three basic rules about a criminal case that you must keep in mind.

First, the defendant is presumed innocent until proven guilty. The indictment [information] against the defendant is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant starts out with a clean slate.

Second, the burden of proof is on the government throughout the case. The defendant has no burden to prove his or her innocence, or to present any evidence, or to testify. The defendant has the absolute right to remain silent. You are prohibited from arriving at your verdict by considering that the defendant may not have testified.

Third, the government must prove the defendant's guilt beyond a reasonable

doubt. I will give you further instructions on these points later, but keep in mind that a criminal case is different from a civil case which only requires proof by a preponderance of the evidence.

Conduct by the Jury

Now, a few words about your conduct as jurors.

First, I instruct you that during the trial you are not to discuss the case with anyone, including yourselves and your families, or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case.

Second, do not read or listen to anything touching on this case in any way. If anyone should try to talk to you about it, bring it to my attention promptly.

Third, do not try to do any research or make any investigation about the case on your own.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberation at the end of the case.

If you wish, you may take notes to help your recollection. If you do, leave them in the jury room when you leave at night. And remember that they are for your own personal use--they are not to be given or read to anyone else.

Course of the Trial

The trial will now begin. First, the government will make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence. The defendant's attorney may, but does not have to, also make an opening statement.

The government will then present its witnesses, and defendant may cross-examine them. Next defendant may, if he/she/it wishes, present his/her/its witnesses, and the government may cross-examine them. Then the government may have a final opportunity to present some rebuttal evidence, again subject to the defendant's cross examination.

After that, the attorneys will make their closing arguments to summarize and interpret the evidence for you. Those will be followed by further instructions on the law. You will then retire to deliberate on your verdict.